



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 28, 1997

Mr. Edwin M. Snyder  
First Assistant City Attorney  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR97-0460

Dear Mr. Snyder:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103967.

The City of Plano (the "city") received a request for information relating to a claim filed against the city for alleged damage done to the requestor's home resulting from work done by a city contractor. You state that certain information responsive to the request is being released to the requestor, but that the remaining information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The City must meet both prongs of this test for information to be excepted under section 552.103(a).

You state that the city received a notice of claim from the requestor for damages done to her home, (a copy of which you submitted to this office), and that, in a telephone conversation with you, she indicated it would be her intent to litigate the matter against the city should the city not resolve the claim in her favor. In Open Records Decision No. 638 (1996), this office stated that a governmental body may demonstrate that it reasonably anticipates litigation if it receives a notice of claim letter *and* represents to this office that the letter is in compliance with the

requirements of the Texas Tort Claims Act, Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance or statute. Because you have not made the required representation, we cannot find that litigation is reasonably anticipated based solely on the filing of the notice of claim.

We also note that litigation cannot be regarded as "reasonably anticipated" unless there is concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). This office has concluded that litigation is reasonably anticipated when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, and when a requestor hires an attorney who threatens to sue a governmental entity. Open Records Decision Nos. 555 (1990), 551 (1990). But where a requestor "has publicly stated on more than one occasion" an intent to sue, this fact alone is insufficient to establish that litigation is reasonably anticipated. Open Records Decision No. 331 (1982). Under the facts of the present case, we conclude that the city has not established that litigation is reasonably anticipated, and therefore, the requested information may not be withheld pursuant to section 552.103.<sup>1</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 103967

Enclosures: Submitted documents

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<sup>1</sup>Pursuant to section 552.305 of the Government Code, this office notified Freese & Nichols, Inc. of the open records request and provided it with an opportunity to submit in writing to this office its reasons why information contained in the contract between the city and Freese & Nichols for geotechnical services should be withheld from disclosure. By letter dated February 19, 1997, Freese & Nichols notified this office that it does not desire to make any exceptions to disclosure in this matter.

Mr. Edwin M. Snyder - Page 3

cc: Ms. Mary Jane Unzicker  
3613 Deep Valley Trail  
Plano, Texas 75023  
(w/o enclosures)